

UNITED STATES DISTRICT COURT  
for the  
Eastern District of Wisconsin

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PROTEIN2o, Inc.,

Plaintiff,

Civil Action No.:  
Hon.

v.

LANGLADE SPRINGS, LLC

Defendant.

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**COMPLAINT**

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NOW COMES plaintiff, PROTEIN2o, INC., by its attorneys, Crivello Carlson, S.C., and as and for a cause of action against defendant, LANDGLADE SPRINGS, LLC, alleges and shows to the Court as follows:

**THE PARTIES**

1. Plaintiff, PROTEIN2o, INC. (hereinafter “PROTEIN2o”), is a Delaware corporation, with its principal place of business located at 2755 West Thomas Street, Melrose Park, IL 60160; the principal corporate activity of the plaintiff is the manufacturing and sale of flavored beverages.

2. Defendant, LANDGLADE SPRINGS, LLC (herein after “LANDGLADE”), is a Wisconsin corporation, with its principle place of business located at W6933 State Road 64, Polar, WI 53092; its principal corporate activity consists of manufacturing bottled water, along with other flavored beverages.

### **JURISDICTION AND VENUE**

3. This jurisdiction is based on diversity of citizenship of the parties hereto under Title 28, U.S.C. Sec.1332.

4. The amount in controversy exceeds the sum of seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs.

5. Venue is proper pursuant to Title 28, U.S.C. Sec. 1391.

### **COUNT I: BREACH OF CONTRACT**

As its first cause of action, Protein O<sup>2</sup> states and alleges to the Court as follows:

6. The plaintiff realleges as set forth herein the full allegations set forth in paragraphs 1-4 inclusive.

7. On or about May 8, 2014, PROTEIN2o entered into a Private Label Co-Packer agreement with LANGLADE to produce Grape Splash, Lemon Splash and Berry Splash low-calorie water beverages along with “any other PROTEIN2o products requested” (Exhibit A).

8. Pursuant to the Private Label Co-Packer Agreement, PROTEIN2o was to supply the following to LANDGLADE for the manufacture of the low-calorie water beverages:

- a. Recipe for bottled products
- b. Ingredients for bottled products
- c. Labels

9. PROTEIN2o was also responsible for the shipping of the products.

10. LANDGLADE mixed and bottled the low-calorie water beverages and provided services to PROTEIN2o as follows:

- a. Co pack PROEIN2o beverages,
- b. Mixing and bottling of products,

- c. 500ML bullet-style bottles with two 6.7mm heads (standard PET),
- d. Clear caps,
- e. Tray/clear film wrapping – UCC provided one case,
- f. Pallet/pallet wrap, and
- g. Short-term warehousing of raw materials and finished products prior to shipping.

11. Pursuant to the Private Label Co-Packer Agreement, LANDGLADE mixed and bottled the subject low-calorie water beverages and shipped them to PROTEIN2o.

12. Upon receipt of the subject low-calories water beverages, PROTEIN2o determined that there was something wrong with the product which led to the discovery that the beverages had microbiological spoilage and were not safe to consume.

13. LANDGLADE breached contract with PROTEIN2o under the terms of the private label co-packer agreement by supplying contaminated product.

14. As a direct result of LANDGLADE's breach of the Private Label Co-Packer Agreement, PROTEIN2o suffered the following damages:

- 1. Loss of contaminated product, \$141,097.60;
- 2. Labor expense, \$34,775.00;
- 3. Transportation expense, \$30,000.00;
- 4. Cost of laboratory testing, \$30,000.00; and
- 5. Cost of product destruction, \$29,510.45

16. As a further result of LANDGLADE's breach of the Private Label Co-Packer Agreement, PROTEIN2o also sustained damages in loss of goodwill/reputation, and lost sales.

17. PROTEIN2o is entitled to reasonable attorney's fees and costs incurred in bringing this action pursuant to the terms of the Private Label Co-Packer Agreement.

**COUNT II: NEGLIGENT BREACH OF CONTRACT**

As and for its second cause of action, PROTEIN2o states and alleges to the Court as follows:

18. PROTEIN2o realleges as set forth herein the full previous allegations found in paragraphs 1-14 inclusive in the complaint.

19. Pursuant to the Private Co-Packer Agreement, LANDGLADE mixed and bottled the subject beverage for PROTEIN2o at its facilities.

20. As a result of unsanitary conditions at LANDGLADE facilities, microbiological spoilage occurred in the product that was ultimately shipped to PROTEIN2o.

21. LANDGLADE is negligent in failing to maintain a proper sanitary facility such that the product being mixed and bottled for PROTEIN2o would not sustain microbiological spoilage.

22. As a result of that negligence, PROTEIN2o sustained the damages listed in count I above.

23. PROTEIN2o has fully performed its obligations under the terms of the Private Label Co-Packer Agreement.

**WHEREFORE**, PROTEIN2o demands judgment against LANDGLADE SPRINGS, LLC for the following:

1. In the amount of \$265,383.05 for its losses due to the contaminated product, transportation expenses, labor expenses, laboratory testing expenses and the costs of product and destruction.

2. Losses sustained as a result of damage to goodwill/reputation and loss of revenue due to the breach of private label co-packer agreement in providing contaminated product.
3. All reasonable attorneys' fees and costs in pursuing this action.

**PROTEIN O<sup>2</sup> DEMANDS A JURY TRIAL ON ALL FACTUAL ISSUES**

Dated this 25 day of July, 2016.

CRIVELLO CARLSON, S.C.  
Attorneys for Plaintiff, PROTEIN2o

By: /s/ Eric D. Carlson  
ERIC D. CARLSON  
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**EPROOF OF SERVICE**

The undersigned certifies that the foregoing document was served upon all counsel of record in the above matter by depositing a copy thereof in the U.S. Mail with postage prepaid on

J. Espenels  
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